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Opinion on remand from Supreme Court

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

K.J., a Minor, etc., et al., Plaintiffs, v. LOS ANGELES UNIFIED SCHOOL DISTRICT et al., Defendants and Respondents; LUIS A. CARRILLO, Objector and Appellant.	B269864 (Los Angeles County Super. Ct. No. BC505356)

APPEAL from an order of the Superior Court of Los Angeles County, William P. Barry, Judge. Affirmed.

Werksman Jackson Hathaway & Quinn, Werksman Jackson & Quinn, Kelly C. Quinn, Mark W. Allen, and Michael G. Freedman for Objector and Appellant.

Coleman and Associates and John M. Coleman for Defendants and Respondents.

Attorney Luis Carrillo appeals the trial court's order requiring him to pay attorney fees and costs as discovery sanctions to defendant and respondent Los Angeles Unified School District (LAUSD). Carrillo contends the sanctions order is void because it violated this court's temporary stay imposed in a related writ proceeding; in the alternative, he urges the order was an abuse of the trial court's discretion because it was not authorized by statute, awarded fees and costs incurred in connection with a subsequently reversed contempt order, and awarded fees and costs LAUSD had not yet incurred. We find no merit in any of these contentions, and thus we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In April 2013, 12-year-old K.J. was allegedly sexually assaulted by an unknown male in a restroom at an LAUSD school. K.J. brought the present action against LAUSD for negligence, in which she has been represented by attorney Carrillo.

In June 2015,[1] LAUSD moved to compel K.J. to undergo a neuropsychiatric examination to be conducted by Dr. Mohan Nair. K.J. moved for a protective order. Although K.J.'s motion is not included in the record on appeal, other portions of the record demonstrate that she sought to limit or preclude Dr. Nair from questioning her about the details of the alleged sexual assault in order to avoid "retraumatizing" her. K.J. urged such questioning was unnecessary because she had already described the details of the assault at her deposition and to various medical professionals.

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1 All subsequent events occurred in 2015 unless otherwise indicated.

On July 15, the trial court denied K.J.'s motion for a protective order, granted LAUSD's motion to compel, and ordered K.J. to submit to a neuropsychiatric examination at Dr. Nair's office on July 28 (the July 15 order). The court declined to impose limitations on the scope of Dr. Nair's questioning during that examination.

K.J. appeared for the examination at the appointed time, accompanied by her mother and Attorney Carrillo. What happened next is disputed by the parties and gave rise to the discovery dispute that resulted in the sanctions at issue here. According to LAUSD, Carrillo requested, in K.J.'s presence, that Dr. Nair not ask K.J. about the alleged sexual assault because it would "re-traumatize" her. LAUSD asserted Carrillo's request "completely undermine[d]" the trial court's July 15 order and "directly led" K.J. to refuse to answer questions during the examination. LAUSD also said Carrillo "unilaterally departed" with K.J. before the examination was completed. K.J. gave a different account of the relevant events, asserting that prior to the examination, Carrillo asked Dr. Nair only whether he had received K.J.'s deposition transcript. K.J. also asserted that Dr. Nair, not Carrillo, cancelled the remaining portion of the examination when Carrillo insisted on audiotaping a segment of the examination involving a test Dr. Nair claimed was proprietary.

On approximately July 31, LAUSD brought a motion for monetary, issue, and/or terminating sanctions against K.J. and/or Carrillo. K.J. opposed the motion, and a series of briefs followed, supported by, among other things, letters from or declarations by Dr. Nair, his office manager, Carrillo, and K.J.'s mother, as well

as transcripts of portions of the audiotaped neuropsychiatric examination.

On September 15, the day set for hearing, the trial court took the sanctions motion off calendar and, apparently on its own motion, advised the parties it believed Carrillo's statements at the neuropsychiatric exam may have constituted willful disobedience of its July 15 order. The following day, September 16, the trial court issued an order to show cause why Carrillo should not be found guilty of contempt. Because a factual dispute existed regarding what occurred at the neuropsychiatric exam, the court set an evidentiary hearing for September 30.

On September 30, following the evidentiary hearing, the court found Carrillo guilty of contempt. Subsequently, on October 13, the trial court issued a written order (the October 13 order) finding Carrillo guilty of deliberate, willful, and premeditated disobedience of its July 15 order, and it sentenced Carrillo to 24 hours in county jail and imposed a $750 fine. The October 13 order additionally stated that LAUSD "may make application for Fees and Costs associated with the Order to Show Cause re Contempt of Court issued to Luis A. Carrillo on September 16, 2015 and the Hearing on September 30, 2015."

On October 23, Carrillo challenged the contempt order in a petition for writ of habeas corpus filed with this court (*In re Carrillo*, B267743).[2] On October 26, we issued an order staying "[t]he order issued on October 13, 2015"; on November 4, we directed LAUSD to file a preliminary response to Carrillo's

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[2] Carrillo filed a motion for judicial notice of the records in *In re Carrillo*, which we have granted.

petition and continued the stay of the October 13 order "pending further order of this court."

Meanwhile, on October 7, after the trial court orally announced its intention to find Carrillo guilty of contempt, but before it issued a written order, LAUSD refiled its motion for monetary sanctions for Carrillo's violation of the July 15 order.[3] LAUSD sought $100,000 from Carrillo and his law office, made up of $52,247.41 in fees and costs, and $47,752.59 in sanctions "to deter future misconduct." The claimed fees were for 199 hours of attorney time, 36.8 hours of which were billed for tasks related to the contempt hearing. LAUSD also asked the court to set a date to complete the neuropsychiatric exam.

On November 19, the trial court granted LAUSD's motion, in part, ordering Carrillo and his law firm to pay LAUSD sanctions of $16,111. The court explained the only issue it considered was "the issue of compensation . . . that should be . . . awarded to [LAUSD] because of the conduct that occurred" at the July 15 neuropsychiatric examination; "anything that happened working up to the [examination]" was excluded, as were costs related to the examination that would have been "incurred anyway." Counsel for LAUSD queried whether the court's order included fees and costs incurred with regard to both the discovery dispute and the contempt hearing. The court replied that its order covered the "[t]otality." In response to a similar inquiry from K.J.'s counsel, the court clarified, "It's not so much for the contempt, it's for the extra work that was created by a discovery problem. . . . I am not looking at this as contempt sanctions. I

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[3] For reasons not apparent from the record, on November 9, LAUSD again renoticed its sanctions motion.

mean, it's arising out [of] that incident and it came up in connection with a contempt hearing, but it's really a motion for interference with [the] discovery process. And that's why I think it's allowable." When K.J.'s counsel noted that the Court of Appeal had issued a stay order, the trial court explained: "This is different. . . . Whether or not the contempt decision is upheld, there were delay[s] and costs incurred by . . . LAUSD as a result of what occurred. So, whether or not the appellate court agrees with my decision, I think that the LAUSD should be entitled to be compensated for the costs reasonably related to what did occur."

K.J.'s counsel then asked the court to stay any part of the award associated with the contempt proceedings until the Court of Appeal ruled "because I think it would moot it out if [the contempt order were] overturned." The court disagreed: "I . . . want to make it clear that this [the sanctions order] is intended to compensate [LAUSD] for extra work that was incurred in what I viewed as being an obstruction of the discovery process whether or not it was contemptuous. So, this particular decision will stand, in my view, regardless of what the appellate decision is."

LAUSD's counsel noted that LAUSD had asked for an additional $48,000 in penalties, and the court stated that it was denying that request because "I'm not penalizing someone. [¶] . . . [¶] There is no penal component on this award." LAUSD's counsel followed up: "Just so it's clear, final word, regardless of what the appellate court does on the criminal petition, that has no impact on this order?" The court clarified that its sanctions order was independent of anything the Court of Appeal might do with regard to the writ petition: "There is no penal component to my decision in this case. And my intention,

regardless of whether or not my decision on the contempt proceedings is upheld, this is intended to compensate [LAUSD] for costs they should not [have] had to incur."

On December 1, the trial court issued a written order (the December 1 order) directing Carrillo "individually, and/or the Law Offices of Luis A. Carrillo, jointly and severally," to pay $16,111 to LAUSD. The order further stated: "As reflected on the Hearing record, this Award is intended to compensate the defendant for the unnecessary work caused by Mr. Carrillo, and is not intended to depend on the finding that what he did was contemptuous."

On January 8, 2016, we issued a *Palma* notice[4] to the trial court. Treating the habeas petition as a petition for a writ of prohibition, we concluded there was not substantial evidence to establish beyond a reasonable doubt that Carrillo had willfully disobeyed the trial court's July 15 order. Thus, we found that the trial court lacked jurisdiction to enter the October 13 contempt order and was required to find Carrillo not guilty. In light of this "clear legal error," we notified the parties of our intention to issue a peremptory writ of mandate.

On January 29, 2016, the trial court vacated its October 13 order and issued a new order finding Carrillo not guilty of deliberate, willful, and premeditated disobedience of a court order. In that order, the court stated: "The Court's new order does not in any way reverse or change the Court's previous order, dated December 1, 2015, awarding sanctions totaling $16,111.00 to LAUSD, based upon its finding that [Carrillo] had violated

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[4] *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.

discovery statutes and the Court's Rulings in that regard." On February 4, 2016, we dismissed *In re Carrillo* as moot and vacated the stay.

K.J. timely appealed from the December 1 sanctions order.[5] (Code Civ. Proc., § 904.1, subd. (a)(12).)

CONTENTIONS OF THE PARTIES

Carrillo asks this court to reverse the trial court's December 1 order awarding LAUSD fees and costs as a sanction for discovery misconduct. Carrillo contends the December 1 order is void because it violated the temporary stay; alternatively, he urges, the order was an abuse of the trial court's discretion because it was not authorized by the pertinent discovery statutes, included fees and costs related to the contempt proceeding, and awarded fees and costs LAUSD had not yet incurred.

LAUSD responds that the stay did not stay *all* proceedings in the underlying case, and the December 1 order did not include any matters subject to the stay. LAUSD also contends there was

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[5] We dismissed K.J.'s appeal in February 2017, finding that we lacked jurisdiction to review the December 1 order because it imposed sanctions against only Carrillo, who was not named in the notice of appeal. (*K.J. v. Los Angeles Unified School Dist.* (Feb. 23, 2017, B269864 [nonpub. opn.].) Carrillo sought review of our decision, and on January 30, 2020, the California Supreme Court reversed and remanded, holding that because it was clear from the record that Carrillo intended to participate in the appeal, the notice of appeal should be construed to include him. (*K.J. v. Los Angeles Unified School Dist.* (2020) 8 Cal.5th 875.)

Following remand to this court, we permitted the parties to submit supplemental briefs addressing the issues that remained for our consideration. In deciding this appeal, we have considered both the initial and supplemental briefs.

no abuse of discretion because the sums the trial court awarded were proper discovery sanctions.[6]

As we discuss, our stay order did not preclude the trial court from awarding attorney fees and costs as monetary sanctions for discovery violations, and the award of $16,111 was not an abuse of discretion. We therefore affirm the December 1 sanctions order in full.

DISCUSSION

I.

The Sanctions Order Did Not Violate the Stay Imposed by this Court

Carrillo contends the trial court's December 1 sanctions order is void because it was issued in violation of the stay imposed by this court in connection with the writ proceedings. Whether an order or judgment is void is a legal question we review de novo. (*People v. The North River Ins. Co.* (2020) 48 Cal.App.5th 226, 232; *Sakaguchi v. Sakaguchi* (2009) 173 Cal.App.4th 852, 858.)

Generally, an appellate stay precludes a trial court from enforcing the judgment or order from which an appeal or writ has been taken, including all matters " 'embraced' in or 'affected' by" the appeal or writ. (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 189 (*Varian*).)[7] The trial court may,

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[6] LAUSD separately contends that the record on appeal is insufficient because it does not contain K.J.'s motion for a protective order. We find the appellate record sufficient to allow us to reach the merits of the appeal, and thus we have done so.

[7] *Varian* addressed the automatic stay provisions of Code of Civil Procedure section 916, but its analysis appears to apply

however, proceed with matters embraced by the action and *not* affected by the judgment or order. (*Ibid.*) " '[W]hether a matter is "embraced" in or "affected" by a judgment [or order] . . . depends on whether postjudgment [or postorder] proceedings on the matter would have any effect on the "effectiveness" of the appeal [or writ].' [Citation.] 'If so, the proceedings are stayed; if not, the proceedings are permitted.' " (*Ibid.*)

In the present case, the trial court's October 13 order found Carrillo in contempt of court, sentenced Carrillo to 24 hours in county jail, and ordered him to pay a $750 fine to the superior court clerk. It did *not* award LAUSD attorney fees and costs. Thus, since this court stayed only the trial court's October 13 order—and because that order did not include an award of attorney fees to LAUSD—our stay did not, on its face, preclude the trial court from awarding attorney fees and costs to LAUSD.

Although the October 13 order did not expressly include an award of attorney fees, Carrillo urges that order "embrace[d]" or "affect[ed]" fees because the finding of contempt was a necessary predicate to the award of fees. This is so, Carrillo says, because "[a]bsent the October 13, 2015 Order, LAUSD could not have sought fees." We do not agree. Pursuant to Code of Civil Procedure[8] section 2023.030, a party may seek, and a court may award, "a monetary sanction ordering that one engaging in the misuse of the discovery process, *or any attorney advising that conduct*, or both pay the reasonable expenses, including

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equally to a discretionary stay ordered by an appellate court in connection with a writ proceeding.

[8] All subsequent statutory references are to the Code of Civil Procedure unless otherwise indicated.

attorney's fees, incurred by anyone as a result of that conduct." (§ 2023.030, subd. (a), italics added).) Misuses of the discovery process "include, but are not limited to," "[f]ailing to respond or to submit to an authorized method of discovery," "[m]aking, without substantial justification, an unmeritorious objection to discovery," and "[d]isobeying a court order to provide discovery." (§ 2023.010, subds. (d), (e), (g); see also *Department of Forestry & Fire Protection v. Howell* (2017) 18 Cal.App.5th 154, 191 (*Howell*).)

Although a court may treat discovery misuse as a "contempt of court" (§ 2023.030, subd. (e)), a finding of contempt is not a prerequisite to an award of monetary sanctions under section 2023.030.[9] To the contrary, "monetary sanction[s]" and "contempt sanction[s]" (as well as issue sanctions, evidence sanctions, and terminating sanctions) are *alternative* sanctions available to a court to punish misuse of the discovery process. (§ 2023.030, subds. (a)–(e).) Accordingly, LAUSD's ability to recover attorney fees associated with Carrillo's discovery misconduct did not in any way depend on the trial court's contempt finding.

Carrillo next contends that the sanctions order violated the appellate stay because it "enforced" the October 13 order. It is true, as Carrillo notes, that the October 13 order stated that LAUSD "may make application for Fees and Costs associated with the Order to Show Cause re Contempt of Court issued to Luis A. Carrillo on September 16, 2015 and the Hearing on

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[9] Indeed, as we have said, LAUSD initially filed its motion for discovery sanctions in July, *before* the trial court issued its order to show cause regarding contempt.

September 30, 2015." However, the October 13 order manifestly did not award fees and costs, nor did it determine that LAUSD was entitled to such an award. In short, while the October 13 order invited LAUSD to seek fees and costs, it did not decide the merits of such a motion. Accordingly, the December 1 attorney fee award did not "enforce" an order already made by the trial court—instead, it was a new order on a subject on which the trial court had not yet ruled.

The present case thus is distinguishable from *Saltonstall v. Superior Court* (1957) 150 Cal.App.2d 271 (*Saltonstall*), on which Carrillo relies. In *Saltonstall*, the trial court issued an order compelling a father to return his child to the mother before a specified date. The father filed a writ petition challenging the trial court's order, and the Court of Appeal issued a temporary stay. The Court of Appeal ultimately denied the writ petition and, days later, the trial court issued an order to show cause why the father should not be held in contempt for failure to comply with its order. (*Id.* at p. 272.) The Court of Appeal ordered the trial court to cease any further proceedings in connection with the order to show cause, explaining that its temporary stay remained in effect until the order denying the writ petition became final. Accordingly, the trial court's order to show cause issued prior to the finality of the writ proceeding "was in violation of the order of this court and is void." (*Id.* at p. 273.)

The present case is fundamentally different from *Saltonstall*. In *Saltonstall*, the trial court ordered the petitioner to show cause why he should not be held in contempt for failing to comply with an order whose enforcement had been stayed by the Court of Appeal. Since the trial court could not enforce the stayed order, the Court of Appeal held it also could not hold a

party in contempt for failing to comply with that order. In the present case, in contrast, this court did not stay enforcement of an attorney fee order; indeed, as we have said, the attorney fee order had not yet been made at the time we ordered the temporary stay and, thus, could not have been embraced by it.

Finally, Carrillo contends that the sanctions order encroached on a matter covered by the appellate stay because it "awarded LAUSD with fees and costs associated with Mr. Carrillo's contempt hearing." We do not agree. As we have described, LAUSD sought more than $52,000 in fees in connection with 199 hours of attorney time, 36.8 of which were associated with the contempt hearing. The trial court awarded LAUSD only a fraction of the fees it sought—$16,111 of the $52,000 requested—and it did not clearly indicate whether that award included fees related to the contempt hearing. We therefore cannot conclude that the trial court awarded fees "associated with the contempt hearing."

In any event, even had the trial court awarded fees associated with the contempt hearing, that award would not have violated the appellate stay. The trial court stated on the record that the sanctions were not for contempt, but instead were intended to compensate LAUSD "for the extra work that was created by a discovery problem." In other words, the court said, although Carrillo's improper behavior during discovery was the basis for both the contempt order and the attorney fee award, LAUSD was entitled to the attorney fee award "[w]hether or not the contempt order is upheld." It explained: "I am not looking at this as contempt sanctions. . . . [I]t's arising out [of] that incident and it came up in connection with a contempt hearing, but it's really a motion for interference with [the] discovery process. And

that's why I think it's allowable. . . . Whether or not the contempt decision is upheld, there were delay[s] and costs incurred by . . . LAUSD as a result of what occurred. So, whether or not the appellate court agrees with my decision, I think that the LAUSD should be entitled to be compensated for the costs reasonably related to what did occur. . . . [T]his is intended to compensate [LAUSD] for extra work that was incurred in what I view as being an obstruction of the discovery process whether or not it was contemptuous. So this particular decision will stand, in my view, regardless of what the appellate decision is."

We agree with the trial court that the propriety of its sanctions order did not depend on the outcome of Carrillo's writ petition. Punishment for contempt " ' "can only rest upon [a] clear*, intentional violation* of a specific, narrowly drawn order." ' " (*Van v. LanguageLine Solutions* (2017) 8 Cal.App.5th 73, 82, italics added.) In contrast, section 2023.030 "does not require a misuse of the discovery process to be willful before monetary sanctions may be imposed." (*Kohan v. Cohan* (1991) 229 Cal.App.3d 967, 971.) Instead, " ' "[w]henever one party's improper actions—*even if not 'willful'*—in seeking or resisting discovery necessitate the court's intervention in a dispute, the losing party presumptively should pay a sanction to the prevailing party." ' " (*Ellis v. Toshiba American Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 878, italics added.)

Because a contempt order requires a finding of willfulness, and a monetary sanctions order does not, a trial court reasonably could find—as the trial court ultimately did in this case—that although a party was not guilty of contempt, it was properly assessed monetary sanctions for misusing the discovery process. For the same reason, the court could properly include in a

sanctions award the fees and costs associated with an evidentiary hearing at which the court considered whether a discovery violation was willful, even if it ultimately found the sanctioned party had not acted in contempt of court. Our conclusion in the writ proceeding that "there was not substantial evidence to establish beyond a reasonable doubt that [Carrillo] *willfully disobeyed* the court's orders of July 15, 2015" (italics added) therefore did not void the December sanctions order.

II.

The Trial Court Did Not Abuse Its Discretion by Awarding LAUSD $16,111 in Fees and Costs

Alternatively, Carrillo contends that even if the December 1 monetary sanctions order did not violate the appellate stay, it nonetheless was an abuse of the trial court's discretion because it was unauthorized by statute. For the reasons that follow, Carrillo's contention lacks merit.

As Carrillo acknowledges, a trial court has broad discretion in awarding discovery sanctions, and we must uphold the trial court's determination absent an abuse of discretion. "Thus, we will reverse the trial court only if it was arbitrary, capricious, or whimsical in the exercise of that discretion." (*Howell*, *supra*, 18 Cal.App.5th at p. 191; see also *People ex rel. State Dept. of State Hospitals v. S.M.* (2019) 40 Cal.App.5th 432, 440–41 [" ' "Imposition of sanctions for misuse of discovery lies within the trial court's discretion, and is reviewed only for abuse." ' "].) "The question on appeal 'is not whether the trial court should have imposed a lesser sanction; rather, the question is whether the trial court abused its discretion by imposing the sanction it chose.' " (*Padron v. Watchtower Bible & Tract Society of New York, Inc.*, (2017) 16 Cal.App.5th 1246, 1260.)

In the present case, LAUSD sought monetary sanctions under a variety of provisions of the Code of Civil Procedure—sections 2023.030 (discovery sanctions), 2032.410 (failure to submit to physical or mental examination), 2032.420 (failure to produce another for physical or mental examination), and 1218 (contempt). The trial court did not specify the provision under which it awarded sanctions,[10] but its statements at the hearing suggested that its order was made pursuant to section 2023.030, which, as we have said, permits a trial court to impose a monetary, issue, evidence, terminating, or contempt sanction against a person "engaging in the misuse of the discovery process, or any attorney advising that conduct, or both." (§ 2023.030, subd. (a).) Section 2023.030 further provides that if a monetary sanction is authorized by statute, a trial court "*shall*" impose monetary sanctions unless it finds that the person subject to such sanctions acted with substantial justification or other circumstances make the imposition of the sanction unjust. (§ 2023.030, subd. (a), italics added.)

Carrillo contends that section 2023.030's broad grant of authority to the trial court to impose discovery sanctions for misuse of the discovery process is limited by sections 2032.410 and 2032.420, which Carrillo suggests permit monetary sanctions

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[10] The trial court was not required to specify with particularity the statutory basis for awarding sanctions. "Unlike other statutes authorizing sanctions (e.g., §[§] 128.5, subd. (c), 177.5) the discovery statutes do not require the court's order to 'recite in detail' the circumstances justifying the award. [Citation.] Indeed, the trial court is not required to make findings at all." (*Ghanooni v. Super Shuttle* (1993) 20 Cal.App.4th 256, 261.)

"under only two circumstances: (1) if a party is required to submit to a mental examination but fails to do so; and (2) if a party is required to produce another for a mental examination but fails to do so." He therefore contends sanctions were unwarranted here because K.J. "submit[ted]" to a neuropsychiatric exam as ordered. In fact, section 2032.410 permits a court to choose from several possible sanctions: If a party fails to submit to a physical or mental examination, the court may impose issue, evidence, or terminating sanctions; alternatively, "*[i]n lieu of or in addition to that sanction*," the court may, on motion of the party, "impose a monetary sanction under Chapter 7 (*commencing with Section 2023.010*)." (§ 2032.410, italics added.) In other words, although section 2032.410 permits the court to award specified sanctions for a party's failure to submit to a physical exam, the section *also* expressly permits a court to award monetary sanctions pursuant to section 2023.010—which, as we have said, authorizes monetary sanctions for "misuse of the discovery process." (§§ 2032.410, 2023.030, subd. (a).)

Although section 2023.010 identifies some broad categories of discovery misuse, those categories explicitly are illustrative, not exhaustive. (See § 2023.010 ["[m]isuses of the discovery process include, *but are not limited* to, the following," italics added]; see also *Palm Valley Homeowners Assn. v. Design MTC* (2000) 85 Cal.App.4th 553, 563–564 [the statutory list of sanctionable discovery abuses is not exclusive, so that misuse of the discovery process included nonenumerated misconduct of knowingly participating in discovery on behalf of a suspended corporation]; *Mattco Forge v. Arthur Young & Co.* (1990) 223 Cal.App.3d 1429, 1440−1441 [motion for reconsideration of a

discovery sanction award is a misuse of the discovery process even though not constituting a type of misconduct enumerated in the statute].) As relevant here, we therefore have no difficulty concluding that "misuse" is not limited to a failure to appear at a court-ordered examination, but also may include an attorney's actions that influence his client not to fully participate in such an examination after being ordered by a trial court to do so.

Carrillo also errs by contending that section 2023.030 did not authorize the trial court's order because it included fees and costs incurred in connection with the contempt hearing. He asserts: "[B]ecause Mr. Carrillo was not adjudged guilty of contempt, the Superior Court's award of attorneys' fees and costs associated with the contempt proceeding was without basis." As discussed in the previous section, the record does not clearly demonstrate that the trial court awarded fees incurred in connection with the contempt proceedings; and, in any event, a trial court properly could award such fees even though it ultimately declined to make a contempt finding.

Finally, Carrillo errs by suggesting that the trial court abused its discretion by imposing fees and costs associated with "a future neuropsychiatric evaluation." Although we agree with Carrillo that a court may not award fees and costs not yet incurred (*Tucker v. Pacific Bell Mobile Services* (2010) Cal.App.4th 1548, 1551, 1563), we do not agree that the trial court did so in this case. LAUSD's sanctions motion sought to recover $18,337 it paid Dr. Nair in connection with the aborted July 28 neuropsychiatric exam—34.5 hours at $525 per hour. It supported its request with a copy of Dr. Nair's bill for services rendered through the time of the hearing. At the hearing, the court indicated it would reduce the request by 19 hours, to

$8,100, because "as I indicated, some of those costs would have been incurred anyway." These comments make clear that the court was awarding a portion of Dr. Nair's costs that LAUSD had *already incurred*—not fees it would incur in the future.

For all of these reasons, the December 1 sanctions order was not an abuse of the trial court's discretion.

DISPOSITION

The December 1, 2015 sanctions order is affirmed. LAUSD is awarded its appellate costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P.J.

We concur:

LAVIN, J.

EGERTON, J.